NATHAN BROTHERS v. TONG NAM CONTRACTORS LTD.

[A. C. J. (Ambrose J.) May 26, 1959]

[Singapore — District Court Appeal No. 38 of 1958]

Landlord and Tenant — Tenant knowingly committing breach of provision in Municipal Ordinance and exposing landlord to fine or forfeiture — Proof of knowledge — Ignorance of law — Control of Rent Ordinance (Cap. 242), s.15(1)(h).

This was an appeal by Nathan Brothers, the defendants, from a judgment of the District Court giving the plaintiff possession of a certain house under section 15(1)(h) of the Control of Rent Ordinance. This provision of the Ordinance empowers the Court to give judgment for possession "where the tenant...has knowingly committed a breach...of any provision of the Municipal Ordinance...affecting the premises which exposes the landlord to any penalty, fine or forfeiture." The District Court's judgment was based on the finding that the defendants had committed a breach of section 144(7) of the Municipal Ordinance which exposed the landlord to a fine by erecting a building at the rear of the house without obtaining approval of a plan and specification of the building. The appeal was based on the submission that the learned District Judge had failed to find whether the defendants had knowingly committed the breach.

Held: (1) before the defendants could be deprived of the protection of the Control of Rent Ordinance, it must be proved that the defendants knew that they were committing a breach of the Municipal Ordinance at the time of their doing so. According to section 15(1)(h) of the Control of Rent Ordinance, the commission of a breach of a provision of the Municipal Ordinance was not enough: the breach had to be committed "knowingly". *Sarah Cashin* v. *Goh Kah Seng*(2) followed;

(2) there is no presumption that every one knows the law. *Evans* v. *Bartlam* (3) followed. The proposition that ignorance of the law will not excuse a man from the penal consequences of a crime was inapplicable in this case because the Court was not concerned with the penal consequences of a crime but the circumstances in which the defendants could be deprived of the protection of the Control of Rent Ordinance. They must be proved to have known that they were committing a breach of the Municipal Ordinance at the time of their doing so.

Cases referred to:—

(1) *John Lancaster Radiators Ltd.* v. *General Motor Radiator Co. Ltd.* [1946] 2 All E.R. 685.

(2) *Sarah Cashin* v. *Goh Kah Seng* [1955] M.L.J. 52.

(3) *Evans* v. *Bartlam* [1937] A.C. 473, 479; [1937] 2 All E.R. 646, 649.

DISTRICT COURT APPEAL.

T. G. Dunbar for the defendants-appellants.

K. C. Chan for the plaintiff-respondent.

Ambrose J.: This was an appeal by the defendants from a judgment of the District Court giving the plaintiff possession of a certain house under section 15(1)(h) of the Control of Rent Ordinance. This provision of the Ordinance empowers the Court to give judgment for possession "where the tenant . . . has knowingly committed a breach . . . of any provision of the Municipal Ordinance . . . affecting the premises which exposes the landlord to any penalty, fine or forfeiture." The judgment was based on the finding that the defendant had committed a breach of section 144(7) of the Municipal Ordinance which exposed the landlord to a fine by erecting a building at the rear of the house without obtaining approval of a plan and specification of the building.

It was submitted by counsel for the appellants that the District Judge had failed to find whether the defendants had knowingly committed the breach.

Counsel for the respondent objected to this point being taken as it was not raised in the Court below. The appellants' answer to this objection was that in paragraph 8 of the defence they denied every averment in the statement of claim in these terms:

"The Defendants claim the protection of the Control of Rent Ordinance.

Save as herein expressly admitted the Defendants deny each and every averment contained in the Statement of Claim as if the same were set out seriatim and specifically traversed."

It was decided by the Court of Appeal in England in the case of *John Lancaster Radiators, Ltd.* v. *General Motor Radiator Co., Ltd.*(1) that a traverse in the form adopted in paragraph 8 of the defence is a sufficient compliance with the rule that each allegation of fact, the truth of which is not admitted, must be specifically dealt with. In paragraph 3 of the statement of claim it was alleged that the defendants "knowingly erected an unlawful structure in contravention of section 144(7) of the Municipal Ordinance and thereby exposed the plaintiff to a penalty under section 144(10) of the said Ordinance." I ruled that the effect of paragraph 8 of the defence was to raise the point as to whether the defendants knowingly committed a breach of section 144(7) of the Municipal Ordinance. If, however, I was wrong in so ruling, it was my opinion that the point could, nevertheless, be taken in this Court as it went to the jurisdiction of the District Court.

Counsel for the appellants cited the case of *Sarah Cashin* v. *Goh Kah Seng*(2), in support of his submission that, before the defendants could be deprived of the protection of the Control of Rent Ordinance, it must be proved that the defendants knew that they were committing a breach of the Municipal Ordinance at the time of their doing so. In that case Whitton J., said:

"The main difficulties in the case arise in interpreting section 15(1)(h) of the Control of Rent Ordinance. In this connection the first point is to determine the meaning and scope of the word 'knowingly'. It is noteworthy that this word did not appear in the corresponding section — 14(1)(k) — of the earlier (1947) Control of Rent Ordinance. It seems safe to conclude, therefore, that when they added it the Legislature considered it desirable to give the tenant added protection by requiring proof of the existence of particular knowledge on his part before the section might operate against him . . . . the effect of adding the word 'knowingly' appears to be that before a tenant is deprived of this protection not only must he have committed a breach which exposes his landlord but also he must have known that he was committing a breach at the time of doing so."

The first answer submitted by counsel for the respondent was that it was sufficient for the plaintiff to show that the defendants knew that the structure was being put up without approval of a plan and specification, and that it was not necessary to show that the defendants knew that what they were doing was a breach of the Municipal Ordinance. The cases cited by counsel in support of his contention merely illustrated the proposition that ignorance of the law will not excuse a man from the penal consequences of a crime. In the present case, however, I was not concerned with the penal consequences of a crime but the circumstances in which the defendants could be deprived of the protection of the Control of Rent Ordinance. According to section 15(1)(h) of the Ordinance, the commission of a breach of a provision of the Municipal Ordinance was not enough: the breach had to be committed "knowingly". I accepted the above-cited interpretation of the word "knowingly" by Whitton J., and came to the conclusion that, before the defendants could be deprived of the protection of the Ordinance under section 15(1)(h), they must be proved to have known that they were committing a breach of the Municipal Ordinance at the time of their doing so.

The next answer submitted by counsel for the respondent was that every man is presumed to know the law and that the defendants must accordingly be presumed to have known that what they were doing was a breach of the Municipal Ordinance. I did not accept this submission, as I took the view that there is no presumption that every one knows the law, as was pointed out by Lord Atkin in *Evans* v. *Bartlam*[3].

The last answer submitted by counsel for the respondent was that there was evidence that the defendants knew that they were committing a breach of the Municipal Ordinance. The first portion of the evidence on which counsel relied was the evidence in cross-examination given by George Selva Nathan, a partner of the defendant firm, to the effect that he instructed his manager to demolish and replace the old structure with a new structure, that he did not find out whether he could do this without submitting a plan and specification for approval, that he did not submit a plan and specification, and that he knew what he was doing. This evidence did not, in my opinion, establish that the defendants knew that they were committing a breach of the Municipal Ordinance at the time they erected a building at the rear of the house.

The next portion of the evidence on which counsel relied was a letter dated the 10th February, 1958, sent by the defendants' solicitors to the plaintiff's solicitors in these terms:

"It is true that a City Council Notice was served on our clients, but we are to inform you that our clients did not erect a new plank-walled timber-framed and corrugated asbestos-roofed building at the rear of the premises as alleged by you. The timber-framed and corrugated asbestos-roofed building has been in existence for some time and all our clients did was to repair the same. In the circumstances our clients do not think that they have contravened section 144 of the Municipal Ordinance."

According to this letter, the defendants did not on the 10th February, 1958, consider that they had contravened section 144 of the Municipal Ordinance as alleged in the City Council notice dated the 16th December, 1957. In my opinion, it could not be inferred from this that the defendants were aware of the provisions of section 144 of the Municipal Ordinance at the time the building was erected, which was some time prior to the 1st October, 1957.

The last portion of the evidence on which counsel for the respondent relied was the following question put by defendants' counsel to the managing director of the plaintiff company in cross-examination on the 29th September, 1958:

"If the structure was a new structure, the defendant firm would have submitted plan and specifications to the City Council?".

In the light of the testimony of G. S. Nathan, a partner of the defendant firm, to the effect that he did not find out whether he could replace the old structure with a new structure without submitting a plan and specification for approval, the question put by defendants' counsel appeared to be based on the defendants' attitude as set out in their solicitors' letter of the 10th February, 1958, in regard to the City Council notice of the 16th December, 1957. In my opinion, it could not be inferred from this question that the defendants were aware of the provisions of section 144 of the Municipal Ordinance at the time the building was erected.

For the above reasons, I was of the opinion that there was no evidence that the defendants knew that they were committing a breach of the Municipal Ordinance at the time of their doing so.

In the circumstances, I allowed the appeal with costs.

Appeal allowed.

Solicitors: *Murphy, Dunbar & Chung*; *Braddell Bros.*

MACLAINE STOKVIS (MALAYA) LTD. v. THE SALOMA COMPANY

[O.C.J. (Syed Sheh Barakbah J.) April 28, 1959]

[Ipoh — Civil Suit No. 9 of 1959]

Practice and Procedure — Writ of Summons — Not signed by counsel — When a nullity — R.S.C., 1957, O.3 r.6 and O.19 r.4.

In this suit the defendants applied by way of Summons in Chambers for an order that the service of the Writ of Summons and all subsequent proceedings be set aside on the ground that the Statement of Claim was not signed by the plaintiffs' solicitors. The Statement of Claim was by way of a specially indorsed writ pursuant to O. 3 r. 6.

Held: the Writ in the present case was a nullity as it was not signed by counsel.

Cases referred to:—

(1) *Murray & Anor.* v. *Stephenson* (1887) 19 Q.B.D. 60.